IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 747

WASHINGTON, MARLBORO AND ANNAPOLIS MOTOR LINES, INC.,
Petitioner,

v.

LEON HENDERSON, Price Administrator, Office of Price Administration,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

JOHN P. DONOVAN,
Attorney for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable, the Chief Justice and
Associate Justices of the Supreme Court
of the United States:

The petitioner, Washington, Marlboro and Annapolis Motor Lines, Inc. respectfully submits this petition for a writ of certiorari, for the purpose of bringing before this Court for review a decision of the United States Court of Appeals for the District of Columbia, reversing a judgment of the District Court of the United States for the District of Columbia.

I.

On November 3, 1942, the respondent, Leon Henderson, as Price Administrator, Office of Price Administration, and by reason of the authority delegated to him by the Director of Economic Stabilization, by directive No. 1, issued and effective October 14, 1942, (7 Fed. Reg. 8758) filed in the District Court of the United States for the District of Columbia, an action against the petitioner for a temporary restraining order, and for a preliminary and permanent injunction, alleging that the petitioner was collecting a rate of fare from passengers riding on its buses operating between the District of Columbia and Seat Pleasant, Maryland, which was illegal, in that such fare was in excess of the fare which it had charged between such points on September 15, 1942, and as the President or his designated agent, had not been given thirty days notice of the petitioner's intention to increase such fare as required by an Act of Congress, approved October 2, 1942, and known as "An Act to Amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes". (Pub. L. No. 729, Ch. 578, 77th Cong., 2nd Sess.) R. 1.

On the same day, the District Court of the United States for the District of Columbia issued a temporary restraining order against the petitioner, without notice to it. R. 12.

The petitioner filed its answer to the complaint on November 9, 1942, R. 14, and there being no dispute as to the facts, final hearing was had on the complaint and answer in the matter, before the District Court of the United States on November 17, 1942. A finding was made by the Court, dismissing the complaint of the respondent. Thereafter, on November 19, 1942, the court entered its findings of fact and conclusion of law and entered a judgment vacating the temporary restraining order and dismissing the complaint. R. 21 to 23 inc.

The respondent immediately gave notice of appeal and on November 20, 1942, the matter was set for hearing on

November 23, 1942, before the United States Court of Appeals for the District of Columbia. The decision of that Court was handed down on December 4, 1942, reversing the District Court. R. 28.

It is to the judgment of the Court of Appeals reversing the District Court for dismissing the complaint of the plaintiff that this petition is directed.

II.

Jurisdiction.

The judgment reversing the District Court of the United States was entered in the United States Court of Appeals for the District of Columbia on December 4, 1942. R. 35. The jurisdiction of this Court is invoked under Section 240a of the Judicial Code of the United States, as amended by the Act of February 13, 1925, (28 U. S. C. A. Section 347a).

III.

Statement of Facts.

The petitioner, Washington, Marlboro and Annapolis Motor Lines, Inc., is a common carrier and is the owner and operator of a passenger motor bus service operating intrastate in the State of Maryland and in the District of Columbia, and interstate between said State and District, and has been so engaged since 1922.

The operations of the petitioner are over routes fixed and established by the Public Utilities Commission of the District of Columbia and the Public Service Commission for the State of Maryland, at rates of intrastate fare authorized by said commissions within their respective jurisdictions, and at interstate rates of fare authorized by the Interstate Commerce Commission.

All of the interstate operations of the petitioner are within the Metropolitan area of the District of Columbia, and with the exception of the North Beach service, all of the Maryland points to which the buses of the petitioner operate are situated within Prince Georges County.

From a terminal in the District of Columbia located at 11th and Pennsylvania Avenue, Northwest, the buses of the petitioner operate interstate to four points, i. e., Silver Hill, Maryland, 8 miles from the terminal; Suitland, Maryland, 7 miles from the terminal; Forestville, Maryland, 10 miles from the terminal, and Seat Pleasant, Maryland, 9½ miles from the District of Columbia, R. 18a.

The authorized rate of interstate fare on September 15, 1942, for passengers on the petitioner's buses, who were riding between Silver Hill, Maryland, and the District of Columbia, was fifteen cents (15¢); for those passengers riding between Suitland, Maryland, and the District of Columbia, fifteen cents (15¢); for passengers riding between Forestville, Maryland, and the District of Columbia, fifteen cents (15¢), and for those between Seat Pleasant, Maryland, and the District of Columbia, ten cents (10¢). Passengers riding intrastate in the District of Columbia on all of the buses of the petitioner paid the rate of fare authorized by the Public Utilities Commission of the District of Columbia of ten cents (10¢), and passengers riding intrastate on any of said buses within the State of Maryland paid a fare of five cents (5¢) as authorized by the Public Service Commission of that State. R. 17.

The rates of fare charged by the petitioner on September 15, 1942, for the same quality or class of service, were uniform in every particular, except for the rate of interstate fare which was charged for passage between the District of Columbia, and Seat Pleasant, Maryland.

On September 23, 1942 the petitioner, acting in accordance with the appropriate provisions of the Interstate Commerce Act, Part II (49 Stat. L. 543, 54 Stat. L. 919) and certain related regulations of the Interstate Commerce Commission then in force "*To Govern the Construction and Filing of Common Carrier Passenger Fare Applications*" and for other matters, as set forth in Tariff Circular M. P. No. 3, proposed and filed with that Commission, a new passenger tariff or rate of fare to become effective on October 25, 1942, increasing one way interstate fares between Seat

Pleasant, Maryland, and the District of Columbia, from ten cents (10¢) to fifteen cents (15¢) R. 19, thereby making uniform and non-discriminatory the fares on all of the buses of the petitioner, and also making the interstate rate of fare between Seat Pleasant, Maryland, and the District of Columbia, equal to the combined authorized intrastate fares between these points. No increase was proposed or sought for the intrastate rates of fare in effect on that date.

On October 25, 1942, at 12:01 a. m., pursuant to the schedule of tariffs filed with the Interstate Commerce Commission, and in compliance with Rule 5 of Tariff Circular M. P. No. 3, the rate of fare from the District of Columbia to Seat Pleasant, Maryland, was raised from ten cents (10¢) to fifteen cents (15¢). R. 14.

The number of passengers affected by the rate increase of October 25, 1942, totaled about 2300 daily. The petitioner carried on all of its buses approximately 13,000 passengers daily, and on the buses operating between the District of Columbia (11th and Penna. Ave., N. W.) and Seat Pleasant, Maryland, carried approximately 7,700 passengers daily.

IV.

Questions Presented.

1. Was the increase in passenger fare for passengers riding interstate between the District of Columbia and Seat Pleasant, Maryland, and other points on the route, a *general increase* within the meaning of the Act of October 2, 1942, (Public Law No. 729, 77th Congress, 2nd Session) providing that no common carrier or Public Utility shall make any *general increase* in its rates or charges which were in effect on September 15, 1942, unless it first gives 30 days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State or Municipal authority having jurisdiction to consider such increase?

2. Was the petitioner required to first give notice to the President, or such agency as he designated, before putting

the increased rates into effect on October 25, 1942, where the schedule of such rates had been filed with the Interstate Commerce Commission on September 23, 1942, nine days prior to the passage of said Act, and pursuant to the appropriate provisions of the Interstate Commerce Act Part II (49 Stat. L. 543, 54 Stat. L. 919) and certain regulations of the Interstate Commerce Commission then in force "To govern the construction and filing of common carrier passenger fare applications (Tariff Circular M. P. No. 3).

3. Is the Act of October 2, 1942, retroactive?

V.

Assignment of Errors and Reason for Granting the Writ.

The court below erred

1. In holding that the rate increase put into effect by the petitioner was a "general increase" within the meaning of the Act of October 2, 1942.

2. In holding that the petitioner was required to give 30 days notice to the President or his designated agent, and consent to timely intervention, where the tariff schedule for the rate increase put into effect by the petitioner on October 25, 1942, had been filed with the Interstate Commerce Commission and posted in the form and manner prescribed by law on September 23, 1942, nine days before the passage and approval of the Act of October 2, 1942.

3. In holding that the rate increase of the petitioner was not made when it was filed and posted in accordance with law on September 23, 1942, but was made within the meaning of the Act of October 2, 1942, when it became effective on October 25, 1942.

4. In holding that the Act of October 2, 1942 superseded the Interstate Commerce Act.

5. In holding that the increase in rates of the petitioner, which were made and became effective under the provisions

of the Interstate Commerce Act, and related regulations, are unlawful.

6. The questions herein involved deal with two federal laws, namely, the Interstate Commerce Act and the Act of October 2, 1942, amending the Emergency Price Control Act, and the effect of the latter on the rate making provisions of the former and the rules and procedure adopted by the Interstate Commerce Commission with respect thereto. The United States Court of Appeals for the District of Columbia has decided an important question of Federal law, which has not been, but should be passed upon by this court, since one of the questions presented relates to all cases of common carriers or public utilities who made and put into effect a general increase in their rates after September 15, 1942, and prior to the passage of the Act of October 2, 1942, without giving notice in accordance with said Act.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Court of Appeals for the District of Columbia, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Court in the case entitled "Leon Henderson, Price Administrator, Office of Price Administration, Appellant v. Washington, Marlboro and Annapolis Motor Lines, Inc., Appellee," to the end that the cause may be reviewed and determined by this Court in the manner provided by law; and your petitioner prays that the judgment of the United States Court of Appeals for the District of Columbia be reversed.

WASHINGTON, MARLBORO AND ANNAPOLIS MOTOR LINES, INC.,

By LESLIE L. ALTMANN,
President.

Supreme Court of the United States

OCTOBER TERM, 1942

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WASHINGTON, MARLBORO AND ANNAPOLIS MOTOR LINES, INC.,
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LEON HENDERSON, Price Administrator, Office of Price Administration.

BRIEF IN SUPPORT OF PETITION.

POINT I.

THE RATE INCREASE OF THE PETITIONER WAS NOT A "GENERAL INCREASE" WITHIN THE MEANING OF THE ACT OF OCTOBER 2, 1942.

The term "general increase" has no defined meaning in the law of carriers or public utilities. The term nowhere appears in the Interstate Commerce Act, and while it has been used in decisions of the Commission no legal significance attaches under the Act to the use of the same.

The Interstate Commerce Commission has described as general, increases when they affect a small percentage of a particular class of commodity or on particular commodities in a particular area, as the Court below pointed out.

Boots and Shoes from New York Points, 91 I. C. C. Rep. 591;
Grain and Grain Products, 122 I. C. C. Rep. 235.

However, in many other cases where the rates of common carriers were involved, it has clearly demonstrated the common acceptance of the words *general increase.*

Increased Railway Rates, Fares and Charges, 1942, 248 I. C. C. 545;
General Commodity Rate Increases, 1937, Ex Parte No. 115, 229 I. C. C. 435;
Fifteen Percent Case, 1937-1938, Ex Parte No. 123, 226 I. C. C. 41;
Fifteen Per Cent Case, 1917, 45 I. C. C. 303.

Recourse to the Congressional proceedings had in connection with the passage of the Act of October 2, 1942, would indicate the intent of Congress was that the provisions of said Act would apply only to common carriers and public utilities when an increase in rates, charges or fares was made which applied to the majority of users of the particular service involved, who enjoyed the same class of service.

The Congressional Record of Wednesday, September 30, 1942, Vol. 88, No. 166, Pg. 7877, sets forth the original amendment dealing with common carriers and public utilities as proposed by Senator Norris of Nebraska:

"Provided, That rates charged by any common carrier or public utility on September 15, 1942, shall not be increased without the consent of the President.

"Provided further, That nothing in this Act shall be construed as affecting the power or authority of any Federal, State or Municipal authority or agency to reduce prices, rates or charges subject to its jurisdiction."

The proposed Bill to Amend the Emergency Price Control Act, with the Norris amendment (H. R. 7565) went to conference, and on October 2, 1942, the bill as agreed upon by the conferees was reported to the Senate. (Cong. Record, Oct. 2, 1942, Vol. 88, No. 168, Pg. 7970-71)

As finally adopted and approved the "Norris" amendment read:

"Provided, That no common carrier or other public utility shall make any general increase in its rates or

charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President or such agency as he may designate, and consents to the timely intervention by such agency before the Federal State or Municipal authority having jurisdiction to consider such increase."

As finally approved the Act provided: *"That no common carrier or public utility shall make any general increase in its rates or charges* * * *"

This language had been substituted for that providing *"That rates charged* * * * *shall not be increased without the consent of the President."* The word "general" was used to qualify increase in rates.

Congress is presumed to legislate with knowledge of the common meaning of words and the administrative interpretation of them. *American Trucking Association* v. *U. S.*, 17 F. Supp. 655, *State of Florida* v. *U. S.*, 292 U. S. 11, 78 L. ed. 1077, *Chicago M. & S. & P. R. Co.* v. *Tompkins*, 176 U. S. 167, 44 L. ed. 417.

As the court below pointed out in its opinion, the term *"general increase"* has no well defined meaning in the law of carriers or of public utilities, R. 29, it must therefore be presumed that Congress intended that the common meaning be applied to the term "general".

Webster's Twentieth Century Unabridged Dictionary defines the word "general" as, 1. Relating to all of a genus, class, or order; including all of a kind; as, a general law of the animal kingdom applies to all animals alike; 2. Comprehending many species of individuals; not special or particular; as, it is logical to draw a general conclusion from a particular fact; 3. Lacks in signification; not restrained or limited to a particular import; not specific; not directed to a single object; as, a loose and general expression; 4. Public; common; relating to all; comprehending the whole community; common to many or the greatest number; as, a general opinion; a general custom; a general practice; 5. Having or relating to all; common to the whole; as, Adam, our

general sire; 6. Extensive, though not universal; not limited in scope, authority conferred, etc.

The definition "general" meaning pertaining to the majority, common to the greatest number, was accepted in a case involving a contract of rate for electricity. *Steele-Smith Dry Goods Co.* v. *Birmingham Ry. Light & Power Co.*, 15 Ala. App. 271, 73 So. 215.

It is admitted that the rate increase herein involved applied to only 2300 passengers out of more than 13,000 passengers carried daily on the petitioner's buses. On the buses operating from 11th and Pennsylvania Avenue, Northwest, Washington, D. C. to Seat Pleasant, Maryland, more than 7700 passengers were transported each day.

The petitioner made no increase in rate of fare for the other 5400 passengers riding on these buses. There was no increase in the rate of fare for passengers riding on the Seat Pleasant buses between 11th and Pennsylvania Avenue, Northwest, and the District Line at Southern Avenue and Bowen Road. There was no increase made in the fare for passengers riding between the District Line and Seat Pleasant. There was no increase in the District of Columbia intrastate fare or the Maryland intrastate fare.

Furthermore, there was no increase in the interstate fare for passengers riding between 11th and Pennsylvania Avenue, Northwest and Suitland, Silver Hill, or Forestville, Maryland.

The interstate passengers to Suitland, Maryland, rode 7 miles from 11th and Pennsylvania Avenue, Northwest to their destination and paid fifteen cents (15¢). The passengers riding interstate from 11th and Pennsylvania Avenue, Northwest to Silver Hill, Maryland, rode 8 miles and paid a fare of fifteen cents. The passengers boarding the buses of the petitioner at 11th and Pennsylvania Avenue, Northwest, destined for Forestville, Maryland, rode 10 miles and paid an interstate fare of fifteen cents.

But the passengers riding from 11th and Pennsylvania Avenue, Northwest, to Seat Pleasant, Maryland getting the

same quality of service, and riding 9½ miles, the major portion of their journey being over the same route as the others, paid only ten cents (10¢) for the interstate ride, although on September 15, 1942, the combined authorized intrastate fares for such a ride were fifteen cents (15¢). This fare when raised to fifteen cents (15¢) to conform to the charge for like quantity and quality of service, was held to be a "general rate" increase within the meaning of the Act of October 2, 1942.

It is respectfully submitted that the court below has misconstrued the meaning of the term "general increase". Although it is admitted that the rate increase applied to interstate riders on the buses operating between the District of Columbia and Seat Pleasant, Maryland, it is improper to consider them apart from the other residents of Prince Georges County who use the buses of the petitioner, in determining that they constitute a "class", all of whom are about equal distance from 11th and Pennsylvania Avenue, Northwest, and all of whom were receiving the same kind of service.

The test in this case should be whether the rate increase of October 25, 1942, was "general" as to all passengers using the buses of the petitioner who were receiving the same or like service, both as to quantity and quality.

When this test is applied, it must be decided that the rate increase put into effect by the petitioner was not a "general" increase within the meaning of the Act of October 2, 1942, and that, consequently, notice to the President or his designated agent was not required.

POINTS 2 AND 3.

THE INCREASE IN RATES WAS MADE BY THE PETITIONER WHEN FILED ON SEPTEMBER 23, 1942, UNDER THE INTERSTATE COMMERCE ACT AND RELATED REGULATIONS, ALTHOUGH NOT EFFECTIVE UNTIL OCTOBER 25, 1942, AND THE LAWFULNESS OF SUCH RATES WAS NOT ALTERED OR IMPAIRED BY THE ACT OF OCTOBER 2, 1942.

The questions which are here presented for the consideration of the Court are unique.

They embrace the construction of several sections of the Interstate Commerce Act, which in all probability would have never required judicial determination, but for the exigencies produced by the present world conflict in which this nation is now engaged.

They further involve the applicability of the Act of October 2, 1942, retrospectively to these sections of the Interstate Commerce Act.

The petitioner filed with the Interstate Commerce Commission on September 23, 1942, schedule of tariffs increasing its interstate rates for one way passenger fares between Washington, D. C. and Hillside, Maryland, Capitol Heights, Maryland, Maryland Park, Maryland and Seat Pleasant, Maryland, from ten cents (10¢) to fifteen cents (15¢) to become effective on October 25, 1942, thirty-two days later. Filing of the schedule of tariffs was in accordance with the Interstate Commerce Act, Part II, Sections 217 (a) and (c), which provided:

> "(a) Every common carrier by motor vehicle shall file with the Commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property in interstate or foreign commerce between points on its own route and between points on its own route and points on the route of any other such carrier, or on the route

of any common carrier by railroad and/or express and/or water, when a through route and joint rate shall have been established. Such rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information, as the Commission by regulations shall prescribe; and the Commission is authorized to reject any tariff filed with it which is not in consonance with this section and with such regulations. Any tariff so rejected by the Commission shall be void and its use shall be unlawful."

"(c) No change shall be made in any rate, fare, charge or classification, or any rule, regulation or practice affecting such rate, fare, charge or classification, or the value of the service thereunder, specified in any effective tariff of a common carrier by motor vehicle, except after thirty days notice of the proposed change filed and posted in accordance with paragraph (a) of this section. Such notice shall plainly state the change proposed to be made and the time when such change shall take effect. *The commission may, in its discretion and for good cause shown,* allow such change upon notice less than that herein specified or modify the requirements of this section with respect to the posting and filing either in particular instances or by general order applicable to special or peculiar circumstances or conditions."

On September 23, 1942, there were in force certain regulations approved June 8, 1937, by the Interstate Commerce Commission pursuant to Section 217 of the Motor Carrier's Act, to govern the construction and filing of common carrier passenger fare publications. Rule No. 5 of which provided:

"Except as provided in Rule 4, and unless otherwise authorized by the Commission, *fares and charges which have been filed by the Commission must be allowed to become effective and remain in effect for a period of at least thirty days before being changed, cancelled or withdrawn.*" (Italics supplied)

The order of the Interstate Commerce Commission made pursuant to section 217 of the Motor Carrier's Act has the same force as a statute, since it pertained to the fixing of rates.

This court has repeatedly held that rate fixing is legislative in character.

B. & O. R. Co. v. *U. S.*, 298 U. S. 349, 80 L. ed. 1207.
B. & O. R. Co. v. *U. S.*, 264 U. S. 258, 68 L. ed. 668.
St. Joseph Stock Yards v. *U. S.*, 298 U. S. 38, 80 L. ed. 1033.
Honolulu Rapid Transit Co. v. *Hawaii*, 211 U. S. 282, 53 L. ed. 186.
Prentis v. *Atlantic Coastline Co.*, 211 U. S. 210, 53 L. ed. 150.

The petitioner asserted in its answer to the complaint of the defendant filed in the District Court, "that under Rule 5 of the Interstate Commerce Commission Regulations * * * the rates and charges filed with said Commission on September 23, 1942, as aforesaid, had to become effective on October 25, 1942, unless modified or suspended by said Commission prior to that date * * *; that no provision was made by said Commission to postpone the effective date of increased fares and charges by the waiver of rules of traffic circulars until October 29, 1942 (No. 12745, M-34800), four days after the effective date of said increase." (R. 16)

The District Court upheld the contention of the petitioner and found that the rate increases of the petitioner "were made when they were filed with the Commission * * *", and not when they became effective. Under the practice adopted by the Interstate Commerce Commission by the promulgation of Rule 5, a rate was made by a motor carrier when it was filed. By the making of a rate it is meant the action of putting into process an increase in rates.

Under the Motor Carrier Act and related regulations of the Interstate Commerce Commission, a motor carrier put such rate into process on filing it. The motor carrier there-

after being required to put the new rate made by such filing into effect on the date shown on the schedule.

The motor carrier once having filed the schedule of tariffs making the new rate, lost further prerogative with regard to it. Once having exercised the privilege of making a new rate, the exercise of further right was lost to the motor carrier, to the extent that it must have permitted such new rate to become effective and remain in effect for a period of at least thirty days, before changing, canceling or withdrawing it.

Rates filed with the Interstate Commerce Commission have the force of statutes. The *rate on file* is the only lawful charge and deviation from it is not permitted under any pretext. 97 A. L. R. 418.

Thousands of new rates are filed annually by carriers engaged in interstate commerce. Time alone would not permit hearings to be held in the majority of these cases. The Congress has thrown up certain safeguards against the filing of unreasonable rates by such carriers so as to dispense with the necessity of most hearings.

In the case of Motor Carriers it has permitted them to make increase in rates pursuant to section 217 of the Interstate Commerce Act. These rates become effective automatically if not suspended or deferred by the Commission under section 216 (g).

The Commission has the power after rates are in effect to inquire into their reasonableness. The mere allowance of the use of a rate does not make the question of its reasonableness *res adjudicata.* (Section 216 (e))

This practice is, however, not in accordance with that followed by many Public Utilities or Public Service Commissions. There, an application or petition is filed by the common carrier or utility interested in a new rate. The usual practice is to thereafter hold a public hearing and adduce evidence regarding the propriety of the new rate sought.

Thereupon, findings of fact are made by the commission and a formal order passed authorizing the new rate, if it is found to be warranted.

In such cases the new rates are not made until the formal order of such commission is passed.

Realizing the impossibility of adopting such a procedure for the Interstate Commerce Commission, the Congress set up the mechanics for an entirely different kind of procedure which has functioned both effectively and efficiently in handling the myriad rates filed annually.

A rate fixed in the manner prescribed by Part II, Sec. 217 of the Interstate Commerce Act carried as much force in law, as one formally made by an order of the Commission.

The right of the Interstate Commerce Commission to fix the manner and time, and the conditions under which a new rate is made, cannot be challenged. Legislative Acts of Commissions in establishing rates under authority delegated by state or Federal statutes are presumed to be valid in the absence of unequivocal and convincing evidence to the contrary.

Missouri P. R. Co. v. *Norwood,* 283 U. S. 249, 75 L. ed. 1010.
Des Moines Gas Co. v. *Des Moines,* 238 U. S. 153, 59 L. ed. 1244.
Ex Parte Young, 209 U. S. 123, 52 L. ed. 714.
Chicago Mt. St. R. Co. v. *Tompkins, supra.*

The court below in reversing the District Court has based its conclusion that the rate was not made when filed, on the proposition that Sec. 216 (g) of the Act authorizes the Commission, upon complaint of any interested party or upon its own initiative to hold a hearing concerning the lawfulness of the rate, and for this purpose to suspend the operation of such schedule for a period of seven months, and pursuant to the provisions of Section 216 (e), to prescribe the lawful rate or fare.

The fallacy of this conclusion and the error of the reasoning of the court below is apparent from a reading of section 216 (g). This section provides that "the commission * * * upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate or fare or charge, * * * and pending such hearing and the decision thereon the Commission, by filing with such schedules and delivering to the carrier or carriers affected thereby a statement in writing of its reason for such suspension, *may from time to time suspend the operation* of such schedule and *defer the use of such rate,* or change, * * * but not for a period longer than seven months beyond *the time* when it would otherwise *go into effect.*"

What has the suspension of the operation of the schedule and the deferring of the use of the new rate got to do with fixing the time that the rates were made?

This procedure goes only to delay the putting into effect of new rates which have been made. The language of Sec. 216 (g) is capable of only one interpretation. It does not *suspend* or *defer* the *making* of a rate or charge. Quite the contrary, it recognizes that a valid rate has already been made or exists, and provides for its suspension and defers its use "but not for a longer period than seven months beyond the time it would otherwise *go into effect.*"

There is a vast difference between the meaning of the word "make" as ordinarily used, and as defined by the decision of the court below.

Apropos of counsel's contention is that part of the court's opinion dealing with the retroactivity of the Act of October 2, 1942.

There it was held that regardless of whether the rate was *made* on September 23, 1942, when it was filed, that "Congress made no exception in the Act, in favor of carriers who had filed schedules prior to October 2, 1942, but had not put them into *actual effect* before September 15, 1942." (Italics supplied)

A settled legislative policy such as the Interstate Commerce Act should not be altered or the operation of it in any way impeded by providing the Act of October 2, 1942, through judicial interpretation, with a meaning not expressed in explicit language.

This court has said that the conclusion is not lightly to be reached that the Congress would have undertaken to change a policy of such great importance without explicit language indicating that purpose.

Fla. v. *U. S., supra.*
Ann Arbor R. R. Co. v. *U. S.*, 281 U. S. 658, 74 L. ed. 1098.

Is the Act of October 2, 1942, Retroactive?

The court below decided that the Act of October 2, 1942, having been enacted subsequent to the Interstate Commerce Act supersedes that Act to whatever extent may be necessary to achieve its own purpose.

Having already decided that the rates of the petitioner were not made until October 25, 1942, when they were put into operation, such a conclusion is *obiter dictum.*

Counsel would hesitate to suggest that this conclusion of the court, not material to the decision but which would invalidate the new rates of the petitioner even if they had been lawfully made on September 23, 1942, connotes an indecision as to the accuracy of that part of its decision dealing with the time of the making of the rate.

Counsel does suggest, however, that the Court below was in error in both conclusions.

The Act of October 2, 1942, as regards common carriers and utilities is devoid of expression which would indicate that the prohibition contained therein is retrospective in operation so as to affect the validity of rates made prior to its approval.

True, the Act prohibits an increase in common carrier and public utility rates above their September 15, 1942, levels, unless thirty days notice is given the President or

his agent, together with the right to intervene "before the Federal, State, or Municipal authority having jurisdiction to consider such increase."

But, the date September 15, 1942, does not, nor is it intended by the language of the Act, to apply to rates made, authorized or approved, or which were put into effect before October 2, 1942, and after September 15, 1942.

The date September 15, 1942, applies to the time to fix the basis of the levels to be used in the functioning of the Act.

The Act does not provide that it shall be effective from September 15, 1942.

To allow the court below to hold that the Act affects or destroys the validity of lawful rates which were made or put into effect before October 2, 1942, is to permit it to legislate language into the Act.

It is worthy of passing observation, particularly in view of the legal contrariety, to point out that the Court below found that the increased rates that the petitioner was charging on October 25, 1942, were unlawful.

If, as the Court below decided, the putting into actual effect constituted the *making* of the increase in rates within the meaning of the Act of October 2, 1942, then it is the charging or collection of the rates which is unlawful, and not the authorizing of the rates by agencies of competent jurisdiction.

It has never been charged that the rate increase put into effect by the petitioner was inflationary.

CONCLUSION.

Counsel respectfully submits that the rate increase made by the petitioner was not a *"general" increase* within the meaning of the Act of October 2, 1942, and that its new rate was made on September 23, 1942, under the Interstate Commerce Act and regulations.

The petitioner has shown good cause for the granting of the petition.

In the interest of justice, this Court should issue a writ of certiorari and review the judgment of the Court of Appeals of the District of Columbia.

Respectfully submitted,

JAMES P. DONOVAN,
Attorney for Petitioner.

APPENDIX.

[PUBLIC LAW 729—77TH CONGRESS]

[CHAPTER 578 2D SESSION]

[H. R. 7565]

AN ACT

To amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to aid in the effective prosecution of the war, the President is authorized and directed, on or before November 1, 1942, to issue a general order stabilizing prices, wages, and salaries, affecting the cost of living; and, except as otherwise provided in this Act, such stabilization shall so far as practicable be on the basis of the levels which existed on September 15, 1942. The President may, except as otherwise provided in this Act, thereafter provide for making adjustments with respect to prices, wages, and salaries, to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities: *Provided,* That no common carrier or other public utility shall make any *general increase* in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase.

SEC. 2. The President may, from time to time, promulgate such regulations as may be necessary and proper to carry out any of the provisions of this Act; and may exercise any power or authority conferred upon him by this Act through such department, agency, or officer as he shall direct. The President may suspend the provisions of sections 3 (a) and 3 (c), and clause (1) of section 302 (c), of the Emergency Price Control Act of 1942 to the extent that such sections are inconsistent with the provisions of this Act, but he may not under the authority of this Act suspend any other law or part thereof.

SEC. 3. No maximum price shall be established or maintained for any agricultural commodity under authority of this Act or otherwise below a price which will reflect to producers of agricultural commodities the higher of the following prices, as determined and published by the Secretary of Agriculture—

(1) The parity price for such commodity (adjusted by the Secretary of Agriculture for grade, location, and seasonal differentials) or, in case a comparable price has been determined for such commodity under and in accordance with the provisions of section 3 (b) of the Emergency Price Control Act of 1942, such comparable price (adjusted in the same manner), or

(2) The highest price received by such producers for such commodity between January 1, 1942, and September 15, 1942 (adjusted by the Secretary of Agriculture for grade, location, and seasonal differentials), or, if the market for such commodity was inactive during the latter half of such period, a price for the commodity determined by the Secretary of Agriculture to be in line with the prices, during such period, of other agricultural commodities produced for the same general use;

and no maximum price shall be established or maintained under authority of this Act or otherwise for any commodity processed or manufactured in whole or substantial part from any agricultural commodity below a price which will reflect to the producers of such agricultural commodity a price therefor equal to the higher of the prices specified in clauses (1) and (2) of this section: *Provided,* That the President may, without regard to the limitation contained in clause (2), adjust any such maximum price to the extent that he finds necessary to correct gross inequities; but nothing in this section shall be construed to permit the establishment in any case of a maximum price below a price which will reflect to the producers of any agricultural commodity the price therefor specified in clause (1) of this section: *Provided further,* That modifications shall be made in maximum prices established for any agricultural commodity and for commodities processed or manufactured in whole or substantial part from any agricultural commodity, under regulations to be prescribed by the President, in any case

where it appears that such modification is necessary to increase the production of such commodity for war purposes, or where by reason of increased labor or other costs to the producers of such agricultural commodity incurred since January 1, 1941, the maximum prices so established will not reflect such increased costs: *Provided further,* That in the fixing of maximum prices on products resulting from the processing of agricultural commodities, including livestock, a generally fair and equitable margin shall be allowed for such processing: *Provided further,* That in fixing price maximums for agricultural commodities and for commodities processed or manufactured in whole or substantial part from any agricultural commodity, as provided for by this Act, adequate weighing shall be given to farm labor.

SEC. 4. No action shall be taken under authority of this Act with respect to wages or salaries (1) which is inconsistent with the provisions of the Fair Labor Standards Act of 1938, as amended, or the National Labor Relations Act, or (2) for the purpose of reducing the wages or salaries for any particular work below the highest wages or salaries paid therefor between January 1, 1942, and September 15, 1942: *Provided,* That the President may, without regard to the limitation contained in clause (2), adjust wages or salaries to the extent that he finds necessary in any case to correct gross inequities and also aid in the effective prosecution of the war.

SEC. 5. (a) No employer shall pay, and no employee shall receive, wages or salaries in contravention of the regulations promulgated by the President under this Act. The President shall also prescribe the extent to which any wage or salary payment made in contravention of such regulations shall be disregarded by the executive departments and other governmental agencies in determining the costs or expenses of any employer for the purposes of any other law or regulation.

(b) Nothing in this Act shall be construed to prevent the reduction by any private employer of the salary of any of his employees which is at the rate of $5,000 or more per annum.

(c) The President shall have power by regulation to limit or prohibit the payment of double time except when, because of emergency conditions, an employee is required

to work for seven consecutive days in any regularly scheduled work week.

SEC. 6. The provisions of this Act (except sections 8 and 9), and all regulations thereunder, shall terminate on June 30, 1944, or on such earlier date as the Congress by concurrent resolution, or the President by proclamation, may prescribe.

SEC. 7. (a) Section 1 (b) of the Emergency Price Control Act of 1942 is hereby amended by striking out "June 30, 1943" and substituting "June 30, 1944".

(b) All provisions (including prohibitions and penalties) of the Emergency Price Control Act of 1942 which are applicable with respect to orders or regulations under such Act shall, insofar as they are not inconsistent with the provisions of this Act, be applicable in the same manner and for the same purposes with respect to regulations or orders issued by the Price Administrator in the exercise of any functions which may be delegated to him under authority of this Act.

(c) Nothing in this Act shall be construed to invalidate any provision of the Emergency Price Control Act of 1942 (except to the extent that such provisions are suspended under authority of section 2), or to invalidate any regulation, price schedule, or order issued or effective under such Act.

SEC. 8. (a) The Commodity Credit Corporation is authorized and directed to make available upon any crop of the commodities cotton, corn, wheat, rice, tobacco, and peanuts harvested after December 31, 1941, and before the expiration of the two-year period beginning with the 1st day of January immediately following the date upon which the President by proclamation or the Congress by concurrent resolution declares that hostilities in the present war have terminated, if producers have not disapproved marketing quotas for such commodity for the marketing year beginning in the calendar year in which such crop is harvested, loans as follows:

(1) To cooperators (except cooperators outside the commercial corn-producing area, in the case of corn) at the rate of 90 per centum of the parity price for the commodity as of the beginning of the marketing year;

(2) To cooperators outside the commercial corn-producing area, in the case of corn, at the rate of 75 per centum of the rate specified in (1) above;

(3) To noncooperators (except noncooperators outside the commercial corn-producing area, in the case of corn) at the rate of 60 per centum of the rate specified in (1) above and only on so much of the commodity as would be subject to penalty if marketed.

(b) All provisions of law applicable with respect to loans under the Agricultural Adjustment Act of 1938, as amended, shall, insofar as they are not inconsistent with the provisions of this section, be applicable with respect to loans made under this section.

(c) In the case of any commodity with respect to which loans may be made at the rate provided in paragraph (1) of subsection (a), the President may fix the loan rate at any rate not less than the loan rate otherwise provided by law if he determines that the loan rate so fixed is necessary to prevent an increase in the cost of feed for livestock and poultry and to aid in the effective prosecution of the war.

SEC. 9. (a) Section 4 (a) of the Act entitled "An Act to extend the life and increase the credit resources of the Commodity Credit Corporation, and for other purposes", approved July 1, 1941 (U. S. C., 1940 edition, Supp. I, title 15, sec. 713a-8), is amended—

(1) By inserting after the words "so as to support" a comma and the following: "during the continuance of the present war and until the expiration of the two-year period beginning with the 1st day of January immediately following the date upon which the President by proclamation or the Congress by concurrent resolution declares that hostilities in the present war have terminated,".

(2) By striking out "85 per centum" and inserting in lieu thereof "90 per centum".

(3) By inserting after the word "tobacco" a comma and the word "peanuts".

(b) The amendments made by this section shall, irrespective of whether or not there is any further public announcement under such section 4 (a), be applicable with respect to any commodity with respect to which a public

announcement has heretofore been made under such section 4 (a).

SEC. 10. When used in this Act, the terms "wages" and "salaries" shall include additional compensation, on an annual or other basis, paid to employees by their employers for personal services (excluding insurance and pension benefits in a reasonable amount to be determined by the President); but for the purpose of determining wages or salaries for any period prior to September 16, 1942, such additional compensation shall be taken into account only in cases where it has been customarily paid by employers to their employees.

SEC. 11. Any individual, corporation, partnership, or association willfully violating any provision of this Act, or of any regulation promulgated thereunder, shall, upon conviction thereof, be subject to a fine of not more than $1,000, or to imprisonment for not more than one year, or to both such fine and imprisonment.

Approved, October 2, 1942.

Sec. 216

(e) Any person, State board, organization, or body politic may make complaint in writing to the Commission that any such rate, fare, charge, classification, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section or of section 217. Whenever, after hearing, upon complaint or in an investigation on its own iniative, the Commission shall be of the opinion that any individual or joint rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by motor vehicle or by any common carrier or carriers by motor vehicle in conjunction with any common carrier or carriers by railroad and/or express, and/or water for transportation in interstate or foreign commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum, or maximum and minimum, rate, fare, or charge thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective and the Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon its own iniative without a complaint, establish through routes and joint rates, fares, charges, regulations, or practices, applicable to the transportation of passengers by common carriers by motor vehicle, or the maxima or minima, or maxima and minima, to be charged, and the terms and conditions under which such through routes shall be operated: Provided, however, That nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.

(g) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, charge, or classification for the transportation of passengers or property by a common carrier or carriers by

motor vehicle, or by any such carrier or carriers in conjunction with a common carrier or carriers by railroad and/or express, and/or water in interstate or foreign commerce, or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the Commission is hereby authorized and empowered upon complaint of any interested party or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such rule, regulation, or practice, and pending such hearing and the decision thereon the Commission, by filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, or charge, or such rule, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after hearing, whether completed before or after the rate, fare, charge, classification, rule, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, or charge, or classification, rule, regulation, or practice, shall go into effect at the end of such period: Provided, That this paragraph shall not apply to any initial schedule or schedules filed on or before July 31, 1938, by any such carrier in bona fide operation when this section takes effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable.

INTERSTATE COMMERCE COMMISSION
WASHINGTON

No. 12745
M-34800
October 29, 1942

Permission under Sections 6, 217 or 306 of the Interstate Commerce Act, to make stated changes in rates, fares, charges or rules, effective on less than statutory notice, and to depart from the requirements of the Commission's published tariff regulations.

POSTPONE EFFECTIVE DATE OF INCREASED FARES AND CHARGES WAIVES OF RULES OF TARIFF CIRCULARS.

PRESENT: Clyde B. Aitchison, Chairman, to whom the above-entitled matter has been assigned for action thereon.

IT IS ORDERED, That:

1. All common carriers of passengers by motor vehicle, by rail, or by water, subject to the Interstate Commerce Act and their duly authorized agents, in instances where increases in fares and charges of the character embraced in the Act of Congress entitled "An Act to Amend the Emergency Price Control Act of 1942 to Aid in Preventing Inflation and for Other Purposes", approved October 2, 1942, and Executive Order No. 9250 issued pursuant thereto, have been filed with the Commission but are not yet effective, are hereby authorized to publish and file with the Commission consecutively numbered supplements to their respective tariffs, such supplements

(a) to postpone effective date of such increased fares and charges to a date sufficient to enable the carriers and their agents to conform to the requirements of said Act of Congress and said Executive Order, and

(b) to continue the present fares and charges in effect until the date to which the increased fares and charges are postponed,

all such supplements to be made effective not later than the effective date of such increased fares and charges and upon not less than one day's notice to the Commission and the general public by posting and filing in the manner required by law and to bear the following notation:

"Issued on one day's notice under authority of special permission of the Interstate Commerce Commission No. 12745, M-34800, dated October 29, 1942."

2. The authority herein granted authorizing the postponement of the effective date of such increased fares and charges and continuation of the present fares and charges also embraces reduced fares and charges, provided that such reduced fares and charges are part of a general adjustment of fares and charges which includes increases of the character embraced in the said Act of Congress and Executive Order No. 9250.

3. The agents and carriers referred to herein, when postponing the effective date of tariffs, supplements, or revised pages herein authorized may depart from the terms of the Tariff Circulars to the extent necessary to permit the postponement or continuation of fares and charges without reissuing pages or bringing forward the items or other provisions in which the present fares and charges and the increased fares and charges are shown, the supplements issued hereunder shall bear the following notation:

"Departure from the terms of Tariff Circular Rules issued by the Interstate Commerce Commission is authorized under authority of special permission of the Interstate Commerce Commission No. 12745, M-34800, dated October 29, 1942."

4. This permission does not modify any outstanding formal order of the Commission, nor waive, except as herein authorized, any of the requirements of its published rules relative to the construction and filing of tariff publications, nor modify any of the provisions of Part II of the Interstate Commerce Act, except as to the notice to be given.

5. This permission does not authorize the filing of tariffs or supplements in addition to, or other than those referred to herein and that it shall be void as authority for filing after December 1, 1942.

Dated at Washington, D. C., this 29th day of October, 1942.

By the Commission, Chairman Aitchison.

W. P. BARTEL,
Secretary.

(Seal)

INDEX

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 747

WASHINGTON, MARLBORO AND ANNAPOLIS MOTOR LINES, INC., PETITIONER

v.

LEON HENDERSON, PRICE ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia (R. 28–34) is reported in 132 F. (2d) 729.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered December 4, 1942 (R. 34–35). The petition for a writ of certiorari was filed in this Court February 17, 1943. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code of the

United States, as amended by the Act of February 13, 1925 (28 U. S. C. A. Section 347 (a)).

QUESTIONS PRESENTED

(1) Whether the increase in rate for all passengers riding on buses of petitioner between points in Maryland and certain points in the District of Columbia is a "general increase" within the meaning of the Act of October 2, 1942 (Public Law 729, Chapter 578, 77th Cong. 2d Sess.) amending the Emergency Price Control Act.

(2) Whether the provisions of the Act of October 2, 1942, prohibiting a rate increase except on compliance with certain conditions, apply to an increase in rates proposed by petitioner, a common carrier, in a schedule of tariffs filed with the Interstate Commerce Commission nine days prior to October 2, 1942, the date of approval of said Act, but which rates were not to become operative until after the approval of the Act.

STATUTES INVOLVED

The statutes involved are—

(1) The Act of October 2, 1942 (Public Law 729, Chapter 578, 77th Cong., 2d Sess.);

(2) Section 217 (a) (49 U. S. C. Section 317 (a)), Section 217 (c) (49 U. S. C. Section 317 (c)), and Section 216 (g) (49 U. S. C. Section 316 (g)) of the Interstate Commerce Act, Part II (49 Stat. 558; 52 Stat. 1240; 54 Stat. 921).

These statutes appear in the Appendix, *infra*, pp. 15–25.

STATEMENT

The authorized rate of interstate fare in effect on September 15, 1942, for passengers carried on petitioner's buses between Seat Pleasant, Maryland, and points within the District of Columbia was ten cents (R. 14).

On September 23, 1942, petitioner filed with the Interstate Commerce Commission its proposed new tariffs for an increase in its rates by increasing its fare per passenger for the above-described transportation from ten to fifteen cents per passenger. This proposed tariff increase was filed pursuant to the provisions of the Interstate Commerce Act, Part II, Section 217 (a) and (c), which further provides, however, that no such change shall be made until after 30 day's notice of the proposed change is filed and posted in accordance with paragraph (a) of said section (Appendix, *infra,* p. 24). Under that Act, if the Commission took no action within the thirty-day period, the proposed tariff would become effective on October 25, 1942 (R. 19). The Commission did not take any action with respect to the proposed increase.

About 2,300 passengers daily were affected by the proposed rate increase. This represented 17.8% of all the passengers carried by petitioner over all its routes. (R. 15.)

On October 2, 1942, the Act of Congress (Public Law 729, Chapter 528, 77th Cong., 2d Sess.) to amend the Emergency Price Control Act was ap-

proved by the President. This Act provides, *inter alia,* "That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the * * * authority having jurisdiction to consider such increase" (R. 1) (Appendix *infra,* pp. 15–16).

On October 3, 1942, by Executive Order No. 9250 (R. 8a, 8b; 7 Fed. Reg. 7871) the President created the Office of the Director of Economic Stabilization and delegated to him all the powers and authority given to the President under said Act. On October 14, 1942, the Director of Economic Stabilization, by Directive No. 1 (R. 9; 7 Fed. Reg. 8758), designated respondent as his representative to receive notices of increases required by this Act, and delegated to him authority to intervene before rate-making authorities in connection with proposed increases.

On October 25, 1942, petitioner exacted and thereafter continued to collect a fare of 15 cents from each of its passengers on the route above described, until restrained from doing so by a temporary restraining order issued by the District Court of the United States for the District of Columbia on November 3, 1942 (R. 12–13), and vacated on November 19, 1942 (R. 23). At no time prior to the date on which petitioner com-

menced to charge and collect the increased passenger fare was the President of the United States or any agency designated by him, given notice by petitioner or anyone else, of the proposed increase in rates filed by petitioner, as required by said Act of October 2, 1942 (R. 10).

On November 3, 1942, respondent under the authority of the Executive Order, Directive, and the Emergency Price Control Act of 1942, as amended, brought this suit in the District Court of the United States for the District of Columbia seeking a preliminary and permanent injunction against petitioner to enjoin it from unlawfully collecting the 15 cent fare in violation of the Act of October 2, 1942 (R. 1–10). Petitioner answered on November 9, 1942, claiming that the rate was lawfully in effect under the Interstate Commerce Act (R. 14–19). On November 19, 1942, the District Court entered a judgment dismissing respondent's complaint (R. 23). On November 20, 1942, respondent filed its notice of appeal from said judgment (R. 24). The appeal was heard and argued on November 23, 1942, before the United States Court of Appeals for the District of Columbia (R. 27). On December 4, 1942, the Court of Appeals rendered its opinion, and entered a judgment reversing the judgment of the District Court of the United States and instructing that court to grant respondent the relief prayed for in his complaint (R. 28–35).

ARGUMENT

The decision of the Court of Appeals is not in conflict with any other decision, nor does it fail to give proper application to any decision of this Court. While its decision of the first question could have wide application, it is so clearly correct that it does not require review by this Court.

I

The relevance of the Act of October 2, 1942, depends on whether the increase in fares put into effect by petitioner was a "general increase."[1]

As petitioner (Pet. 8) and the court below (R. 29) have pointed out, the term "general increase" does not have a defined meaning in the law of carriers, and is not used in the Interstate Commerce Act. Any indefiniteness in the term in its present application proceeds from the word "general."

The word "general" derives from the Latin "generalis" or "genus," meaning a class. Thus, as petitioner points out (Pet. 10), the word means "Relating to all of a genus, class, or order; including all of a kind" (Webster's *Twentieth Century Unabridged Dictionary;* similarly see Webster's *New International Dictionary*). The increase concerned here affects all of the interstate passengers carried on one route operated by peti-

[1] Both the District Court (R. 23) and the Court of Appeals (R. 29) held that the increase was a "general increase."

tioner (R. 15–19). It affects all passengers travelling between points in the District of Columbia and four points in Maryland, namely, Hillside, Capitol Heights, Maryland Park, and Seat Pleasant (R. 15, 19). Thus it affects all passengers of one class, and is a "general" increase according to one accepted meaning of the word.

Instances may be found in which the Interstate Commerce Commission, using "general increase" as a descriptive term, has used it to designate similar increases. Thus the Commission has used the term "general" to describe increases affecting only about 15% of the total tonnage in a particular territory (*Eastern Case,* 20 I. C. C. Rep. 243, 247); to describe increases in rates on one class of commodities or small group of commodities within a restricted territory (*Grain and Grain Products,* 122 I. C. C. Rep. 235, 264); and to describe proposed advances on one class of commodities (*Boots and Shoes from New York Points,* 91 I. C. C. Rep. 591, 597).[2]

[2] Compare the use of "general" as a descriptive term to describe legislation which affects all of a class and is therefore not discriminatory. *Harwood* v. *Wentworth*, 162 U. S. 547, 563, 564; *Peirce* v. *Van Dusen*, 78 Fed. 693, 704 (C. C. A. 6); *In re Pittsburgh*, 217 Pa. 227, 231, 66 A. 348, 350, aff'd *sub nom. Hunter* v. *Pittsburgh*, 207 U. S. 161; *People* v. *Chicago*, 349 Ill. 304, 323, 182 N. E. 419, 430: "An act is general not because it operates in every place or upon every person in the state, but because every place or person brought within the relations or circumstances provided for is affected by the law. The act is not local or special merely because it

The construction which the Administrator has given the term "general increase" in the Act is in accord with the foregoing usages. In his Procedural Regulation No. 11 (Notice of Increases in Rates and Charges of Common Carriers and other Public Utilities, issued November 12, 1942, 7 Fed. Reg. 9390), the Price Administrator has construed the term as follows:

> § 1300.901 *Definition.* For the purpose of this Procedural Regulation No. 11, a general increase in the rates or charges of a common carrier or other public utility is defined as any change in its rates, fares, classifications, rules, regulations or practices which results in an increase in the charges for transportation or other public utility service applicable to a class of passengers, shippers or customers, including increases in wholesale or industrial rates or charges for public utility services, as distinguished from an increase of rates or charges applicable to a particular customer or transportation service under special arrangement.

The Administrator's construction is consistent with the purpose of the Act,[3] which is best dem-

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operates in but one place or upon a particular class of persons or things, provided there is a reasonable basis for the legislative classification. A law may be general notwithstanding the fact that it may operate in only a single place where the conditions necessary to its operation exists."

[3] The legislative history of the Act is somewhat meagre on the present question. However, the discussion of the bill

onstrated by the unreasonable consequences which would result from adoption of the construction petitioner urges. Petitioner's construction would cause the right of the Price Stabilization authorities to object to a rate increase to depend at least in some instances upon the size of the carrier or utility. Thus if petitioner had operated only the one line affected by the increase between the District of Columbia and the four points in Maryland, petitioner would agree that the increase would be general and that the Price Stabilization authorities would have the right to intervene before the Commission and object to the increase. But because petitioner operates four other lines as well, petitioner contends that the Price Stabilization authorities cannot object to the increase. Petitioner's construction would defeat the obvious purpose of the Act to prevent inflation: greater danger of inflation lies in an increase of rates on *part* of a large carrier's operations (e. g., the New York Central) than in an increase on *all* of a smaller carrier's operations (e. g., the petitioner herein).

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in its final form on the floor of the Senate by Senators Brown (the present Administrator) and Norris, the sponsors of the bill, negative the restrictive interpretation urged by petitioner. Both Senators stated that the bill in final form would require approval by the President or his agent of all rate increases by public utilities (Vol. 88, Cong. Rec. No. 168, pp. 7970, 7973). While not precise, these statements evidence that a broad application was intended.

The construction urged by petitioner is further objectionable because it would permit evasion of the requirements of the Act by piecemeal increases.

Petitioner's argument is simply that another construction of the term "general increase" is possible. Petitioner specifically admits (Pet. 8, 10) that the construction adopted by the Administrator has support in Interstate Commerce Commission decisions and in a dictionary definition. Thus the case is, at its worst, one in which the Administrator selected one of two possible constructions to be given to a statute which he was empowered to administer; such a choice is within his authority. *Gray* v. *Powell,* 314 U. S. 402, 412; *Fed. Sec. Adm'r* v. *Quaker Oats Co.,* No. 424, decided March 1, 1943. Here, indeed, the construction given is clearly the one most consistent with the purpose of the Act.

II

The second question has a much more limited application than the first. Decision of it would affect only rates which were proposed to be increased in schedules filed before October 2, 1942, to take effect thereafter.

The Act of October 2, 1942, provides:

> That no common carrier or other public utility *shall make* any general increase in its rates or charges which were *in effect* on September 15, 1942, *unless it first gives thirty days notice to the President, or such agency as he may designate,* and consents

> to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase. [Italics supplied.]

The Court of Appeals, differing from the trial court, held that the increases herein involved were not "made" before the effective date of the Act, and therefore could not be made in the absence of the thirty-day notice to the President or his designated agency.[4]

The test as to when an increase is "made" is properly resolved by reference to the Interstate Commerce Act, Part II, Section 217 (c) (49 U. S. C., Section 317 (c)) (Appendix, *infra*, p. 25), which provides—

> No change *shall be made* in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting such rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a common carrier by

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[4] The Court of Appeals might have rested its decision on the ground that the Act governs the making of *any* general increase of rates *in effect* on September 15, 1942. On that ground, the date when the increase was made would be immaterial if the increase raised rates above their September 15, 1942, level. Clearly the increase herein had that effect. Had the Court of Appeals rested decision on this ground the question of retroactivity discussed by petitioner (Pet. 19, 20) might be involved. We do not discuss this ground since the Court of Appeals did not rest its decision on it and since the question of retroactivity is not involved if, as we contend, the increase in rate was "made" after October 2, 1942.

> motor vehicle, *except after thirty days' notice of the proposed change* filed and posted in accordance with paragraph (a) of this section. [Italics supplied.]

Under this provision, a carrier may not make an increase in rates by simply filing a schedule of proposed tariff with the Commission. The language of Section 217 (c) clearly compels carriers to file such proposed schedule thirty days before making an increase. The language of that section ("No change shall be made in any rate * * * specified in any effective tariff * * * except after thirty days' notice of the proposed change * * *") clearly supports respondent's contention that the filing of the proposed tariff increase does not constitute the making of an increase in a rate.[5] Thus the rate increase herein

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[5] The very nature of common carrier and public utility rate proceedings refutes petitioner's contention that rates are made when the tariff is filed with a regulatory commission. Many things may take place during the thirty day period commencing with the filing of the proposed rate which may prevent the proposed increase from ever becoming operative. Under the Interstate Commerce Act, Part II, Section 216 (g) (49 U. S. C. A., Section 316 (g)) protests may be filed during the thirty day period and the Commission may suspend rates for as long as seven months. After the Commission has conducted a hearing under the section last mentioned it may also, pursuant to the provisions of Section 216 (g) of the Interstate Commerce Act, prescribe the lawful rate or fare. These proposed rates which are set forth in the schedule of new tariffs proposed by the carrier are subject not only to suspension, but also to drastic modification or change. The increased rate or fare proposed by the peti-

was not made until October 25, 1942, thirty days after the proposed tariff was filed. The rate increase was thus unlawful as it was made without the requisite notice to the Administrator.

This conclusion is consonant with the purpose of the Act, which is the overall stabilization of factors affecting the cost of living at levels prevailing on September 15, 1942. This purpose included prices, wages, salaries in general, and (by specific reference) rates or charges of carriers. The construction of the Act urged by the Administrator carries out this purpose; the construction urged by petitioner would defeat it by permitting a general rate increase to be proposed after September 15 and to become effective after October 2, 1942, without being subject to the control of the Administrator even though its effect would be inflationary.

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tioner on September 23 was therefore subject to change or modification before ever going into effect and could not be deemed to have been made at that time.

CONCLUSION

The decision below does not present a conflict of decisions or a question of sufficient importance to warrant further review. The petition should therefore be denied.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

VALENTINE BROOKES,
Attorney.

DAVID GINSBURG,
General Counsel,

THOMAS I. EMERSON,
Assistant General Counsel,

FLEMING JAMES, JR.,
Chief, Litigation Branch,

DAVID LONDON,
Chief, Appellate Section,

MORTON ABRAHAMS,
Senior Attorney,
Office of Price Administration.

MARCH 1943.

APPENDIX

[PUBLIC LAW 729—77TH CONGRESS]

[CHAPTER 578—2D SESSION]

[H. R. 7565]

AN ACT To amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to aid in the effective prosecution of the war, the President is authorized and directed, on or before November 1, 1942, to issue a general order stabilizing prices, wages, and salaries, affecting the cost of living; and, except as otherwise provided in this Act, such stabilization shall so far as practicable be on the basis of the levels which existed on September 15, 1942. The President may, except as otherwise provided in this Act, thereafter provide for making adjustments with respect to prices, wages, and salaries, to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities: *Provided,* That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal,

State, or muncipal authority having jurisdiction to consider such increase.

SEC. 2. The President may, from time to time, promulgate such regulations as may be necessary and proper to carry out any of the provisions of this Act; and may exercise any power or authority conferred upon him by this Act through such department, agency, or officer as he shall direct. The President may suspend the provisions of sections 3 (a) and 3 (c), and clause (1) of section 302 (c), of the Emergency Price Control Act of 1942 to the extent that such sections are inconsistent with the provisions of this Act, but he may not under the authority of this Act suspend any other law or part thereof.

SEC. 3. No maximum price shall be established or maintained for any agricultural commodity under authority of this Act or otherwise below a price which will reflect to producers of agricultural commodities the higher of the following prices, as determined and published by the Secretary of Agriculture—

(1) The parity price for such commodity, (adjusted by the Secretary of Agriculture for grade, location, and seasonal differentials) or, in case a comparable price has been determined for such commodity under and in accordance with the provisions of section 3 (b) of the Emergency Price Control Act of 1942, such comparable price (adjusted in the same manner), or

(2) The highest price received by such producers for such commodity between January 1, 1942, and September 15, 1942 (ad-

justed by the Secretary of Agriculture for grade, location, and seasonal differentials), or, if the market for such commodity was inactive during the latter half of such period, a price for the commodity determined by the Secretary of Agriculture to be in line with the prices, during such period, of other agricultural commodities produced for the same general use;

and no maximum price shall be established or maintained under authority of this Act or otherwise for any commodity processed or manufactured in whole or substantial part from any agricultural commodity below a price which will reflect to the producers of such agricultural commodity a price therefor equal to the higher of the prices specified in clauses (1) and (2) of this section: *Provided,* That the President may, without regard to the limitation contained in clause (2), adjust any such maximum price to the extent that he finds necessary to correct gross inequities; but nothing in this section shall be construed to permit the establishment in any case of a maximum price below a price which will reflect to the producers of any agricultural commodity the price therefor specified in clause (1) of this section: *Provided further,* That modifications shall be made in maximum prices established for any agricultural commodity and for commodities processed or manufactured in whole or substantial part from any agricultural commodity, under regulations to be prescribed by the President, in any case where it appears that such modification is necessary to increase the production of such

commodity for war purposes, or where by reason of increased labor or other costs to the producers of such agricultural commodity incurred since January 1, 1941, the maximum prices so established will not reflect such increased costs: *Provided further,* That in the fixing of maximum prices on products resulting from the processing of agricultural commodities, including livestock, a generally fair and equitable margin shall be allowed for such processing: *Provided further,* That in fixing price maximums for agricultural commodities and for commodities processed or manufactured in whole or substantial part from any agricultural commodity, as provided for by this Act, adequate weighting shall be given to farm labor.

SEC. 4. No action shall be taken under authority of this Act with respect to wages or salaries (1) which is inconsistent with the provisions of the Fair Labor Standards Act of 1938, as amended, or the National Labor Relations Act, or (2) for the purpose of reducing the wages or salaries for any particular work below the highest wages or salaries paid therefor between January 1, 1942, and September 15, 1942: *Provided,* That the President may, without regard to the limitation contained in clause (2), adjust wages or salaries to the extent that he finds necessary in any case to correct gross inequities and also aid in the effective prosecution of the war.

SEC. 5. (a) No employer shall pay, and no employee shall receive, wages or salaries in contravention of the regulations promulgated by the President under this Act. The President shall

also prescribe the extent to which any wage or salary payment made in contravention of such regulations shall be disregarded by the executive departments and other governmental agencies in determining the costs or expenses of any employer for the purposes of any other law or regulation.

(b) Nothing in this Act shall be construed to prevent the reduction by any private employer of the salary of any of his employees which is at the rate of $5,000 or more per annum.

(c) The President shall have power by regulation to limit or prohibit the payment of double time except when, because of emergency conditions, an employee is required to work for seven consecutive days in any regularly scheduled workweek.

SEC. 6. The provisions of this Act (except sections 8 and 9), and all regulations thereunder, shall terminate on June 30, 1944, or on such earlier date as the Congress by concurrent resolution, or the President by proclamation, may prescribe.

SEC. 7. (a) Section 1 (b) of the Emergency Price Control Act of 1942 is hereby amended by striking out "June 30, 1943" and substituting "June 30, 1944".

(b) All provisions (including prohibitions and penalties) of the Emergency Price Control Act of 1942 which are applicable with respect to orders or regulations under such Act shall, insofar as they are not inconsistent with the provisions of this Act, be applicable in the same manner and for the same purposes with respect to regulations or orders issued by the Price Administrator in the

exercise of any functions which may be delegated to him under authority of this Act.

(c) Nothing in this Act shall be construed to invalidate any provision of the Emergency Price Control Act of 1942 (except to the extent that such provisions are suspended under authority of section 2), or to invalidate any regulation, price schedule, or order issued or effective under such Act.

SEC. 8. (a) The Commodity Credit Corporation is authorized and directed to make available upon any crop of the commodities cotton, corn, wheat, rice, tobacco, and peanuts harvested after December 31, 1941, and before the expiration of the two-year period beginning with the 1st day of January immediately following the date upon which the President by proclamation or the Congress by concurrent resolution declares that hostilities in the present war have terminated, if producers have not disapproved marketing quotas for such commodity for the marketing year beginning in the calendar year in which such crop is harvested, loans as follows:

(1) To cooperators (except cooperators outside the commercial corn-producing area, in the case of corn) at the rate of 90 per centum of the parity price for the commodity as of the beginning of the marketing year;

(2) To cooperators outside the commercial corn-producing area, in the case of corn, at the rate of 75 per centum of the rate specified in (1) above;

(3) To noncooperators (except noncooperators outside the commercial corn-producing

area, in the case of corn) at the rate of 60 per centum of the rate specified in (1) above and only on so much of the commodity as would be subject to penalty if marketed.

(b) All provisions of law applicable with respect to loans under the Agricultural Adjustment Act of 1938, as amended, shall, insofar as they are not inconsistent with the provisions of this section, be applicable with respect to loans made under this section.

(c) In the case of any commodity with respect to which loans may be made at the rate provided in paragraph (1) of subsection (a), the President may fix the loan rate at any rate not less than the loan rate otherwise provided by law if he determines that the loan rate so fixed is necessary to prevent an increase in the cost of feed for livestock and poultry and to aid in the effective prosecution of the war.

SEC. 9. (a) Section 4 (a) of the Act entitled "An Act to extend the life and increase the credit resources of the Commodity Credit Corporation, and for other purposes", approved July 1, 1941 (U. S. C., 1940 edition, Supp. I, title 15, sec. 713a–8), is amended—

(1) By inserting after the words "so as to support" a comma and the following: "during the continuance of the present war and until the expiration of the two-year period beginning with the 1st day of January immediately following the date upon which the President by proclamation or the Congress by concurrent resolution declares that hostilities in the present war have terminated,".

(2) By striking out "85 per centum" and inserting in lieu thereof "90 per centum".

(3) By inserting after the word "tobacco" a comma and the word "peanuts".

(b) The amendments made by this section shall, irrespective of whether or not there is any further public announcement under such section 4 (a), be applicable with respect to any commodity with respect to which a public announcement has heretofore been made under such section 4 (a).

SEC. 10. When used in this Act, the terms "wages" and "salaries" shall include additional compensation, on an annual or other basis, paid to employees by their employers for personal services (excluding insurance and pension benefits in a reasonable amount to be determined by the President); but for the purpose of determining wages or salaries for any period prior to September 16, 1942, such additional compensation shall be taken into account only in cases where it has been customarily paid by employers to their employees.

SEC. 11. Any individual, corporation, partnership, or association willfully violating any provision of this Act, or of any regulation promulgated thereunder, shall, upon conviction thereof, be subject to a fine of not more than $1,000, or to imprisonment for not more than one year, or to both such fine and imprisonment.

Approved, October 2, 1942.

INTERSTATE COMMERCE ACT, PART II
(49 STAT. 558, 52 STAT. 1240, 54 STAT. 924)

SECTION 216. (g) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, charge, or classifica-

tion for the transportation of passengers or property by a common carrier or carriers by motor vehicle, or by any such carrier or carriers in conjunction with a common carrier or carriers by railroad and/or express, and/or water in interstate or foreign commerce, or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the Commission is hereby authorized and empowered upon complaint of any interested party or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such rule, regulation, or practice, and pending such hearing and the decision thereon the Commission, by filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, or charge, or such rule, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after hearing, whether completed before or after the rate, fare, charge, classification, rule, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, or charge, or classification, rule, regulation, or

practice, shall go into effect at the end of such period: *Provided,* That this paragraph shall not apply to any initial schedule or schedules filed on or before July 31, 1938, by any such carrier in bona fide operation when this section takes effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable.

SECTION 217. (a) Every common carrier by motor vehicle shall file with the Commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property in interstate or foreign commerce between points on its own route and between points on its own route and points on the route of any other such carrier, or on the route of any common carrier by railroad and/or express and/or water, when a through route and joint rate shall have been established. Such rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information, as the Commission by regulations shall prescribe; and the Commission is authorized to reject any tariff filed with it which is not in consonance with this section and with such regulations. Any tariff so rejected by the Commission shall be void and its use shall be unlawful.

* * * * *

(c) No change shall be made in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting such rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a common carrier by motor vehicle, except after thirty days' notice of the proposed change filed and posted in accordance with paragraph (a) of this section. Such notice shall plainly state the change proposed to be made and the time when such change will take effect. The Commission may, in its discretion and for good cause shown, allow such change upon notice less than that herein specified or modify the requirements of this section with respect to the posting and filing of tariffs either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

U. S. GOVERNMENT PRINTING OFFICE: 1941